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ALBERTA LAW REFORM INSTITUTE

EDMONTON ALBERTA

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The Institute of Law Research and Reform was established in 1968 by the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The new name "**Alberta Law Reform Institute**" (ALRI) was adopted in 1989.

Funding for the Institute comes primarily from the Department of Justice and the Alberta Law Foundation. The University provides the Institute with office premises and many additional services, including a cash grant.

The objectives of the Institute set out in the Founding Agreement are as follows:

RESEARCH
To conduct and direct research into law and the administration of justice.

RECOMMEND
To consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective.

PROMOTE
To promote law research and reform.

COOPERATE
For the purposes described above, to work in cooperation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.

Program

The Institute's program is the delivery of law reform proposals. It does so by specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.

- a project must be one that neither the political process nor the administrative process is likely to deal with effectively.

- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.

- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

We Need You

Law reform must be an interactive process. We consult closely and continuously with our intended audience, initially to identify appropriate projects, and later to obtain feedback on issues and proposals. The quality of our product is directly related to our ability to recognize the needs of our audience, and to provide a sensitive response to them.

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Acknowledgments

ALRI's mandate is to monitor and make proposals for reform of the law and administration of justice. It does so, and can only do so, in the broader legal community of those who are involved in the various aspects of the law.

ALRI's working relationship with those agencies is cordial and supportive, a vital feature of ALRI's work. The Law Society of Alberta provides a direct link to the profession, a sounding board on projects, and as a body provides ongoing support to ALRI. We acknowledge in particular the support of Presidents Larry Anderson, Q.C. and Doug McGillivray, Q.C., and Executive Directive, Don Thompson, Q.C.

Our second founding member is the Department of Justice. Our work is closely aligned with departmental initiatives, and for implementation must make its way to the Legislature. We thank Minister Stevens and Deputy Minister Matchett for their continued support of ALRI, and for their considered feedback on ALRI projects and plans.

Our third founding partner, the University of Alberta, continues to provide our operating base, both physically within the Law Centre, and more generally, by its support for the standards of research excellence which ALRI espouses.

The CBA has been another key contact with the legal community and is an integral part of our consultation process. We thank Presidents Don Higa, Q.C. and Walter Pavlic, Q.C. and Executive Director, Terry Evenson, for ensuring that the lines of communication are kept open and operating.

We have worked closely in the past with the Legal Education Society of Alberta (LESA) on various projects, and the Rules Project is one which will demand our creative cooperation. We look forward to the phase of explaining and presenting the "new rules" and to working with LESA on this task. We are confident that Mr. Robertson, Mr. Wood, and Ms. Smith will guide us in planning this important educational process.

In addition to departmental and University of Alberta funding, we receive 60% of our budget from the Alberta Law Foundation. We acknowledge, with gratitude, the ongoing support from ALF, both for our core operating budget, and for other special projects. In particular, the rolling commitments and budget forecasts allow for better financial planning for ALRI. To Chairs Mona Duckett, Q.C. and Steve Raby, Q.C., and particularly to David Aucoin and Diana Porter, we express our thanks.

Hellos and good-byes are not so frequent. Board membership changed only slightly as we welcomed Nolan Steed, Q.C., as the Department of Justice replacement for Peggy Hartman who was seconded to the Executive Council. As Director of Constitutional & Aboriginal Law & Legislative Reform, he will be able to make a significant contribution to project selection and management.

We also welcomed Professor Keith Yamauchi in the fall of 2004, who has ably filled the role of University of Calgary Faculty of Law representative, previously occupied by Dean Patricia Hughes.

We also said good-bye to Hilary Stout, who had ably filled in in our Calgary office on a contract term. We welcome Maria Lavelle as our new Calgary counsel, when she joins us in August 2005. Maria has worked with the Department of Justice and Foreign Affairs in Ottawa and also served several terms overseas as a foreign service officer.

Finally, I would like to acknowledge the help and support of our Chairman, the Honourable Justice Neil Wittmann, who continued to provide his always practical and ready advice, notwithstanding taking on additional duties when he assumed the position of the Associate Chief Justice of the Court of Queen's Bench.

Projects – From Suggested Topic to Approved Project

Through various sources, potential topics for research and law reform are brought to the attention of the Director. The Director and Counsel review and categorize the topics and Counsel identifies the critical research issues. Topic descriptions are prepared and presented to the Board for information and comment. The four general phases are:

1. **Gather suggestions**
   - Thumbnail sketch of topic

2. **Gauge interest of community and urgency of topic**

3. **Business Plan for Topic**
   - Resources
   - Time
   - Completion

4. **Board Approval of Project**

Once the project is approved and assigned, a number of features take on significance.

A Collaborative Approach

A project is a collaboration that requires the ALRI Board, the Project Management Committee, the Project Advisory Committee, Counsel and Administrative staff to develop and manage the project cohesively. The Project Management Committee is chaired by a Board member with a second Board member appointed to the committee. The Director assigns Lead Counsel and Co-Counsel. The Project Advisory Committee is established and populated with lawyers, representatives of interested organizations and members of the public.

Regular Progress Reporting

Progress reports should be available for the Project Management Committee, the Director and other interested parties on a regular basis. At critical stages the reporting frequency may be increased. Progress reports must provide the Project Management Committee with a working understanding of the overall plan and the progress made against the plan.

A Consistent Format

ALRI has a preferred method of presentation for its publications and for materials prepared for Board meetings by Counsel.

Implementation Objectives

Identification of potential implementation objectives begins at the Feasibility Study phase. These objectives continue to take shape as a result of discussion amongst the Project Advisory Committee members regarding the project/research issues. Planning for achievement of these objectives usually commences not later than the final third of the Project phase.

Categories of Publications

While we tend to use different types of reports at different stages, the format is not rigid. Normally research papers merely share the results of our work. For example, our report on Recognition of Rights and Obligations in Same Sex Relationships was intended primarily to inform the ongoing debate. On the other hand, our report on Referees reviewed the history and proposed a practical change which was later implemented.

Normally our reports for discussion or consultation memoranda provide all the necessary background information for the reader to provide an informed response. Occasionally we will either update or replicate that information in a final report so as to make the recommendations a more coherent whole. For example, our Final Report on Surrogate Rules was fairly brief because it was complemented by the Practice Manual which we prepared with the Legal Education Society of

Alberta. Cost of Credit Disclosure was complemented by the provisions of Part 9, *Fair Trading Act* and Cost of Credit Disclosure Regulations. Our reports on Arbitration, Limitations, and Trustee Investment Powers are much fuller, and the annotated versions of the draft statute have proven very useful in the implementation process, and in the education process for the Bar once the legislation has been passed.

Finally, it is important to note the volume of reports which are now housed on our website, which provides a single entry point to the compendium of ALRI publications.

The five main types of documents produced by the Alberta Law Reform Institute are:

Research Paper
- Shared Data and Research
- Early Release

Issues Paper
- Develops Policy Issues
  Outlines Possible Solutions
- Seeks Comment and Consultation

Consultation Memorandum
- Focussed Policy Issues
- Identified and Discrete Audience
- Seeks Comment Prior to Final Proposals

Report for Discussion
- Issues and Background
- Proposed Solutions
- Seeks Comment before Proceeding

Final Report
- Considered Position
- Draft Legislation
- Submission for Action

Post Report Activity

Our work does not end with the final report. Significant post-report activity is involved in:

- explanations to "client" departments,
- response to legislative and drafting requests
- assistance to implementation groups
- presentation to legal profession

While reports are under consideration, we carry out a monitoring role to ensure that recommendations are kept up to date and other developments are taken into account.

During this year ALRI issued nine (9) Consultation Memoranda on the Rules of Court Project. The summaries are set out below.

Consultation Memorandum No. 12.10
Motions and Orders

A. Introduction

This consultation memorandum addresses the procedural rules governing motions and applications (Chapter 1), the evidentiary rules concerning motions and applications (Chapter 2), the rules governing variation, setting aside and correction of orders and judgments (Chapter 3) and the rules dealing with entry of orders and judgments (Chapter 4). The following summary will briefly highlight some of the General Rewrite Committee's main proposals in those areas.

The consultation memorandum sets out the initial views of the General Rewrite Committee, but it does so for the purpose of inviting comment and discussion, which will be considered and taken into account before final recommendations are formulated and put into the form of a set of draft Rules of Court.

B. Motions and Applications

The Committee does not propose any changes to the materials to be filed for General Chambers or to the time limits which determine whether a motion is to be heard in General Chambers or Special Chambers. The Committee recommends that Civil Practice Note 6 governing Special Chambers be kept as a practice note, rather than being moved into the Rules. However, several problems with Civil Practice Note 6 are brought to the attention of the judiciary who create practice notes. Civil Practice Note 5 concerning desk applications, on the other hand, should be brought into the Rules because these long-standing and well-established provisions would benefit from greater visibility and use.

The Committee recommends that all provisions concerning telephone applications be contained in the Rules. Several proposals aim to make telephone applications more widely available. For example, the geographical limit for telephone applications based on the location of a participant's residence or place of business should be reduced to 50 kilometres from the Queen's Bench location where the application is brought. The availability of a telephone application will still be at the court's discretion, but unanimous consent of the other participants should no longer be a prerequisite. The court must retain its ability to give directions about how a telephone application is to be heard and should have full discretion to dispense with any requirements, whether an emergency exists or not.

The Committee proposes to delete specialized Rule 387.1 concerning directions about notice requirements in multi-party actions. But this should be offset by an explicit general rule authorizing parties to seek procedural direction from the court at any time. The Committee also proposes to delete as unnecessary Rule 392 concerning leave to serve a notice of motion in the time period between service of a statement of claim and the deadline for filing the statement of defence. Rule 499 concerning appeals from a referee's certificate can also be deleted as unnecessary and obsolete.

On the issue of whether all motions, including *ex parte* motions, should be recorded, the opinions and input of the legal profession are sought concerning various options. The Committee also examines whether appeals from a master should continue to be conducted as hearings *de novo* rather than as appeals on the record and concludes that the *status quo* should remain.

C. Evidence on Motions and Applications

The Committee recommends that an affidavit based on facts within the deponent's personal knowledge should also be able to contain any other evidence which the deponent could give in court. This would explicitly allow exceptions to the hearsay rule. But the Committee rejects a wider use of affidavits based on information and belief and affirms that their use should continue to be restricted to interlocutory motions.

The Committee also rejects proposals to extend fax filing to lawyers resident at a judicial centre and to allow service of unfiled affidavits in any circumstances. The Committee does recommend deletion of Rule 314.1 concerning late filing of affidavits in reply because courts will adequately deal with that situation on an *ad hoc* basis.

The Committee seeks the opinions and input of the legal profession about whether restrictions should be placed on the right to cross-examine on an affidavit. Two models are discussed as options – the British Columbia model of requiring leave to cross-examine in all cases and the Ontario model of requiring all affidavits from both parties to be filed before any cross-examinations can occur, with leave being required to file any further affidavits following cross-examination.

The Committee proposes to streamline and clarify Rules 266, 267 and 268 concerning oral examination of witnesses before the hearing of a motion and at the motion. Overlap between those Rules should be eliminated. When a witness is examined in front of an official other than a judge or master before the hearing of the motion, the party who calls the witness should be able to cross-examine that witness without need for court leave, which is a change from our current practice. Other parties should be able to cross-examine that witness as well. Hostility can be presumed in that situation because the only reason to orally examine a witness before the hearing is where the witness refuses to swear an affidavit voluntarily.

D. Variation, Setting Aside and Correction of Orders and Judgments

Rather than having many different rules for variation, setting aside and discharge of orders and judgments scattered throughout the Rules, the Committee proposes the adoption of a single general rule to deal with this area. The new rule will be authority for both masters and judges to vary and set aside orders, although a master would have no authority to set aside or vary an order originally made by a judge.

The first subsection of the single general rule will allow a court to set aside or vary any final order, judgment or interlocutory order that was made

- *ex parte*,
- in default of defence, or
- in the absence of a party who failed to appear at trial or at a motion by accident or mistake or by reason of insufficient notice of the proceeding.

Subject to an order for enlarged or abridged time under Rule 548, there will be a deadline of 20 days (unless otherwise provided) to bring an application under the first subsection of the single general rule, except for applications to vary or set aside default judgment. In order that this deadline be workable for *ex parte* orders, the deadline cannot commence running from the date of trial or motion but must commence from the date the judgment or order is served or is brought to the attention of the non-attending party.

The second subsection of the single general rule will allow a court to set aside or vary any interlocutory order

- by reason of a matter that arose or was discovered subsequent to the making of the order, or
- on such other grounds as the court considers just.

This provision will replace the current general power to set aside or vary an interlocutory order under Rule 390(1), as well as various other such rules addressing specific types of interlocutory orders.

The single general rule concerns procedure alone and will not change any of the substantive law governing when variation or setting aside will be granted. There will be no requirement under the single general rule that the matter must be heard by the judge or master who originally granted the order or judgment now sought to be varied or set aside. But if the court suspects that a party is trying to abuse the rule by "judge shopping" or attempting to re-litigate, the court can order the application to be heard by the original decision-maker.

There are currently two Rules which provide for the correction of orders and judgments. Rule 330 enables a judge to make further directions following entry of an order or judgment so that a party can receive the relief to which the

party is entitled, provided there is no variation of the substance of the original judgment or order. Rule 339 allows a court to correct a judgment or order containing an error made by accident, slip or omission. The Committee recommends that these two Rules should be merged as two subsections in a single rule. There should be a requirement, in the Rule 330 situation, to return to the judge who originally made the order, but this requirement would not apply to the Rule 339 situation. In neither case would there be a time limit placed on when such applications may be brought. The wording of Rule 339 should also be clarified.

E. Entry of Orders and Judgments

To expedite the preparation and approval of draft orders and judgments, the Committee proposes the adoption of a default entry system with specified time limits. If the court does not direct who is responsible for preparing an order, the rule will provide that the successful party will draft and serve the form of order on all other parties in attendance within 10 days of the order being pronounced. Those parties have 10 days to approve and return the draft order or to object to the form of the draft order by obtaining an appointment to settle its terms. If no response is received, acceptance of the form of order is deemed and the order may be entered.

If the responsible party fails to draft and serve the order, any other party will be entitled to do so. Then the same 10-day response period will apply, with deemed acceptance in the absence of a response. Rule 327 will be amended to allow only three months for entry of an order or judgment before leave of the court is needed to enter it.

The Rules are currently confused and contradictory about the circumstances in which a judge, master or clerk can sign an order or judgment which was not signed forthwith on pronouncement. The Committee proposes to repeal Rule 321(2), (3) and (4) because those provisions are unnecessary or unclear, but to retain and revise Rule 323.1 to govern this area. The clerk will have authority to sign an order only where its form has been approved by the parties and it otherwise accords with the clerk's notes. But in all other cases, and in the case of disputes, orders must go to the judge or master for signature. The Committee also

recommends that clerks should no longer have the authority to settle the minutes of orders.

The Committee proposes to delete various Rules that are unnecessary, self-evident, obsolete or superfluous, such as Rules 324, 325 and 328 concerning judgments obtained on condition, Rules 332 and 334 concerning judgments which direct an accounting of debts, claims or liabilities or an inquiry for heirs and Rule 336 concerning motions for judgment.

Consultation Memorandum No. 12.11
Enforcement of Judgments and Orders

1. MANDATE OF COMMITTEE

The mandate of the Committee on the Enforcement of Judgments and Orders [the committee] is to look at a group of rules concerned with enforcement of judgments or orders of a court. The committee is primarily concerned with Parts 28 (*Enforcement of Judgments and Orders*), 36 (*Extraordinary Remedies*) and 57 (*Rules and Orders Promulgated under the Winding-Up Act*). In addition, the committee will comment on Rules 82-83, 151, 155, 331, 333, and Part 37 as well as some general issues.

This report discusses 160 rules and 7 forms, and makes proposals on 67 issues. In this summary, we outline the principles which guided our work and the highlights of the report. For a table of the disposition of every rule we examined, see Appendix A.

2. PRINCIPLES

1. Remedies are important – A legal system may go to great lengths to reach a just solution to a dispute, but that effort will be worthless if there is no effective, efficient and credible system of remedies to enforce the court's decision.

2. A remedial system must be fair, appropriate and reasonable for all parties – While remedies must give successful litigants confidence in the process and a reasonable hope of recovery, they must also protect the legitimate rights of the unsuccessful party to fair and reasonable enforcement. Remedies must conform to "the principle of proportionality", that is, drastic remedies should be used only "when less intrusive forms of enforcement ... have not worked or are not available."[1]

3. The present enforcement rules are in need of reform – Rules of court should be clear, useful, effective and just. The rules within our mandate do not come close to meeting this standard. They are archaic, repetitive, unclear, unnecessarily technical, procedurally clumsy, excessively complex and sometimes unjust. Given the importance of a fair and effective system of remedies, reform is an urgent need.

4. Obsolete rules and processes should be repealed – Antique processes which are no longer used or needed should be deleted from the new rules. On the other hand, a remedy which appears useless to us may have a use that we have not yet discovered. Caution is the right approach.

5. Chronological organization of the rules – The new rules should roughly follow the chronology of a lawsuit. The Rules presently make some attempt to follow this plan, but the organization breaks down in the rules under consideration in this consultation memorandum.

6. The rules should avoid repetition – Some of the present rules duplicate each other or deal with the same problem, often in different ways. The new Alberta rules should merge duplicates into one rule which contains the best elements of the old.

7. The rules should where possible aim for general propositions rather than a series of specific but similar situations

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[1] J. Beatson, Q.C., *Independent Review of Bailiff Law: Report* (Cambridge: University of Cambridge Centre for Public Law, 2000) at 10 [Beatson].

8. Remedies should as a general rule be immediately available – Once a litigant has obtained a judgment, the remedies necessary to enforce that judgment should be immediately available. The rights of the parties have been settled. There should be no requirement that the successful litigant must go to court again to seek leave to issue remedies. This principle should not apply where the judgment itself says otherwise or where it is dangerous to permit enforcement without prior judicial scrutiny, for example, where immediate deployment of remedies will do a serious and irreparable injury to the unsuccessful litigant.

9. Rules dealing with a subject governed by a statute should where appropriate be moved into the statute or regulation thereunder – Under this heading, we are thinking particularly of the *Civil Enforcement Act* but there are other examples. Many rules are confined to issues governed and regulated by a statute. In all such cases, we should consider moving the rule into the statute or into regulations created under the statute.

1. If the law is concentrated in one place, it is more likely to be coherent and integrated. Dividing the law of creditors' remedies between the *Civil Enforcement Act* and The Rules leads to repetition, confusion and direct conflict. These flaws can be largely eliminated if rules which are part of the scheme of enforcement of money judgments are moved into the *Act* or the *Civil Enforcement Regulation*.

2. The present system of civil enforcement involves the researcher in a lengthy voyage from the *Act* to The Rules and back. Putting the law in one place makes the job of the researcher easier and therefore less expensive and uncertain. However, a rule which applies to more than one remedy or statute likely has to remain in the rules.

3. In most cases, rules will be moved into the *Civil Enforcement Regulation* rather than the *Act*. At present The Rules are largely, although not entirely, procedural rather than substantive. Procedural rules require frequent amendment which is easier for regulations rather

than statutes. Still, the regulations pursuant to an act are more likely to be drafted in harmony with their parent legislation.

3. HIGHLIGHTS

1. Rules which deal only with issues governed by the *Civil Enforcement Act* should be amended and moved to that *Act* or to the *Civil Enforcement Regulation* – We discussed above the fundamental policy underlying the movement of these rules to the relevant statute or, more likely, the regulation. The rules and forms which would be moved are Rules 340.1, 341(2), 348, 349.1, 350, 351, 353-355, 357-358, 360, 368-375, 377-379, 381-383.1 and 470-481.1, and Forms F, F.1, I, I.1, L and M. We propose some amendments to these rules aimed at making the process operate more smoothly and efficiently. Some unnecessary rules should be repealed. In our view, conduct money should no longer be a requirement for examinations in aid. Rules 353, 354 and 355 should be amended to permit service by ordinary mail except in matters relating to contempt, attachment orders, the seizure and sale of a residence or where the court orders otherwise.

2. Rules 74(2), 151 and 155(b), which require leave of the court before enforcement can be commenced, should be repealed – We earlier argued that, once a litigant has obtained a judgment, the remedies necessary to enforce that judgment should be immediately available without leave. Rules 74(2), 151 and 155(b) violate this principle for no good reason and should be repealed. The unsuccessful litigant can still ask the court to stay enforcement in the judgment or later in a stay of enforcement order. In our view, this is sufficient protection without a blanket prohibition of enforcement.

3. The present rules regarding enforcement against a partnership and its partners should be amended to follow Rules 8.01 to 8.06 of the Ontario, *Rules of Civil Procedure* [Ontario Rules].

4. The time limits on the enforcement of money and non-money judgments should be clarified, and Rules 331, 347 and 357 should be amended – The *Limitations Act* or the new Alberta rules should create a period of 10 years from the date of issue of any money or non-money judgment or order for any

enforcement process to be initiated. After the elapse of the 10 year period, an enforcement process cannot be launched at all unless the applicant has obtained a new judgment by action or under Rule 331. Rules 347 and 357 will need to be reconsidered in the light of this proposal. Rule 331, which permits people with judgments or orders to extend the time for enforcement, should be rewritten to make it clear that (1) the rule applies to money and non-money judgments and orders and to all enforcement processes, not just writs of enforcement and (2) a master as well as a judge has jurisdiction to hear and decide the application. Wherever possible, the Rule 331 process should be made less technical and difficult.

5. The rules regarding replevin (Rules 427-436), interpleader (Rules 442-460), receivers (Rules 463-464), preservation orders in part (Rules 467-469) and stop orders (Rule 494) should be moved to a new part of the Alberta rules entitled "Preservation of Rights in Pending Litigation" and located before the rules on trial and judgment – At present The Rules include Part 36, entitled "Extraordinary Remedies," which follows the rules on trial, judgment and enforcement and contains the rules on replevin, interpleader, receivers, preservation orders and stop orders. All of these processes are entirely or mostly used before trial. The Ontario Rules have a separate part entitled "Preservation of Rights in Pending Litigation," which includes rules on interlocutory injunctions and mandatory orders, receivers, certificates of pending litigation, interpleader, interim recovery of personal property (that is, replevin) and interim preservation of property. In our view, the new Alberta rules should follow the Ontario model.

6. Replevin (Rules 427-436), interpleader (Rules 442-460), receivership (Rules 463-464) and the stop order (Rule 494) are useful processes which should remain in the Alberta rules, although amendments are needed – The proposals for amendment are intended to simplify the present rules and clarify the jurisdiction and discretion of the court while preserving processes which play a useful part in Alberta practice.

7. Preservation of property orders, currently governed by Rules 467, 468 and 469, should be amended but should remain in the Alberta rules – One purpose

of the preservation order is to ensure that the property in dispute or its worth in money is safeguarded until judgment has been rendered. The process is remedial because it guarantees that the party seeking title or an interest in the property will enjoy the fruits of a favourable judgment. The remedy serves a second process which has nothing to do with remedies or enforcement. It can be used as a device to gather and preserve evidence before trial to support the applicant's side and undermine that of the opponent. Both purposes are useful and should be retained. In our view, the discovery-like elements should be cut out of the present rules and put into the discovery part of the new rules. The remedial aspects should be retained in the new part entitled "Preservation of Rights in Pending Litigation." We propose several amendments to the remedial aspects of Rules 467, 468 and 469 to expand their scope and increase their efficiency and clarity.

8. Rules 361 to 363 governing recovery of possession of land should be retained and amended – The committee proposes several amendments to simplify and modernize these essential rules. We would eliminate the writ of possession on the ground that a well-drafted judgment or order will do the same job. The problem of goods left in a property subject of a possession order is now dealt with by the cumbersome Rule 363. We propose that the rule be amended to bring it into line with the more flexible scheme set out in the *Residential Tenancies Act*.

9. Rules 494.1-498 governing sale of land should be retained with minor amendments.

10. The new Alberta rules should provide a range of penalties which a court may give against someone who acts contrary to or who disobeys a court order other than an order for the payment of money – One of the most common complaints of respondents to the Rules Project is that the courts will not enforce their own orders, often because they will not imprison the violator for contempt. In our view, the solution is the creation of a rule listing a variety of possible penalties for disobedience to an order. The list would include but would not be limited to contempt; it would include penalties ranging from a warning to a fine to a monetary award. Other remedies may include modification or elimination of exemptions from enforcement, suspension of the driver's licence of the delinquent

under the motor vehicle legislation and remedies aimed at directors and officers of corporate offenders. The substance of the present Rules 364 to 367 should be amended and included in the list. Another possible remedy is to follow the example of the present Rule 367 and section 8 of the *Civil Enforcement Act*. These provisions empower the court to get someone else to perform the act which the disobedient person should have performed. The choice of the appropriate penalty or remedy will lie with the court. While contempt may well be appropriate in serious cases, the capacity to choose a less severe penalty may result in the rules being enforced more often and more firmly than is now the case.

11. The Winding-up and Restructuring Act Rules [*WURA* Rules] (Rules 754-812) should be repealed – The *Winding-up Act* was passed in 1882 to deal with the liquidation of "Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations." The *Act*, now re-entitled the *Winding-up and Restructuring Act* [*WURA*], is still in force and continues to be the basis for a relatively small but significant type of liquidation. Some western provinces, including Alberta, promulgated Winding-up Act rules early in the twentieth century. Most provinces have repealed their rules, but Alberta retains them. In our view, they should be repealed. Alberta courts will still be able to make procedural rulings by resort to the general rules or to the *WURA* itself.

12. Masters should be permitted to hear and decide applications for civil contempt – Section 9 of the *Court of Queen's Bench Act* excludes from the master's jurisdiction matters related to criminal proceedings or the liberty of the subject and applications relating to civil contempt except in maintenance enforcement situations. The exclusion of civil contempt from masters' jurisdiction creates difficulties. The committee strongly believes that masters should be empowered to hear and decide civil contempt applications at least within the areas surveyed in this consultation memorandum.

Consultation Memorandum No. 12.12
Summary Disposition of Actions

A. Introduction

This Consultation Memorandum covers an important aspect of legal practice and procedure, that being the ability to have a matter disposed of in a summary way where that is a reasonable way of dealing with the action. This increases access to justice, in that it frees up trial time for other matters requiring a full hearing. It is also likely to cost the litigants less money, and certainly uses up less of their time. Because such summary disposition often takes place near the beginning of an action, the problems associated with delay may also be ameliorated.

In successive chapters, we discuss the topics of Striking Out Pleadings; Trial of an Issue and Special Case Rules; Summary Judgment; Summary Trial Procedure; the Streamlined Procedure; the possibility of combining Summary Disposition Procedures; and Default Procedures. The discussion in this paper is organized around the issues that arose as the Committee considered each topic, and reflects research and consultation, as well as the experience and views of the General Rewrite Committee.

The Consultation Memorandum sets out the initial views of the General Rewrite Committee, but it does so for the purpose of inviting comment and discussion, which will be considered and taken into account before final recommendations are formulated and put into the form of a set of draft Rules of Court.

B. Summary Disposition of Claims

The general rule is that all issues raised in an action will be disposed of at a single trial, even though it may be months or even years after the action is commenced. However, there are several methods in The Rules for having a matter dealt with in alternative ways, in order to reach a resolution more quickly. The courts have been careful to distinguish which cases are suitable for summary disposition, to ensure

that justice is done between the parties while attempting to shorten the time elapsed and, if possible, conduct the action in a more economical way, thus allowing greater access to justice for more parties. The main rules offering alternative, usually earlier, disposition are as follows:

- Striking Out Pleadings (Rule 129);
- Trial of an Issue (Rules 220-224);
- Special Case (Rule 232);
- Summary Judgment (Rule 159-164);
- Summary Trial Procedure (Rules 158.1-158.7); and,
- Streamlined Procedure (Rules 659-672).

In reviewing the various rules, the Committee considered whether the current rules are serving a useful purpose, whether they could be combined, and whether they could be improved.

C. Striking Out Pleadings - Rule 129

Rule 129 should be retained, even though there is a heavy onus on the applicant to make out its case under this rule, and the decision is discretionary. The rule provides a useful procedure for ensuring that litigants are not put to the time, expense and consequences of further litigation, unless it is warranted.

However, the Committee felt that changes should be made to the rule and that it should be rewritten along the lines of Ontario, *Rules of Civil Procedure* [Ontario Rules], Rule 21.01. An addition should be made to the rule enabling a party to move to strike or stay an action or amend a pleading on the grounds that the pleading discloses no cause of action; that the court has no jurisdiction; or, that the pleading is frivolous, scandalous, or vexatious or otherwise constitutes an abuse of process. Subsection (c) of Rule 129 should be removed.

D. Trial of an Issue and Special Case

Trial of an issue (Rules 220-224) and special case (Rule 232) are both methods under which a law suit can be split into two (or more) parts for separate determination.

The Committee recognized that the main competing goals being served with these rules are the saving of time and money in a lawsuit, as against ensuring that justice is done between the parties. The test in Alberta of an "exceptional case" has been strictly applied in applications to sever issues for trial purposes. The Committee found these rules to be useful as they provide an expeditious resolution in appropriate cases, and the strictness of the test ensures that only those issues suitable for pre-trial resolution are heard in this manner.

Both rules could be combined into a re-written Rule 221, which would always require leave of the court and directions for the hearing to the parties. Some additional changes should be made to specific wording in the rule. After reviewing similar rules in other Canadian jurisdictions, the Committee thought that *Federal Court Rules, 1998* [Federal Rules], Rule 220 would serve as an appropriate model.

E. Summary Judgment

The provisions in The Rules relating to summary judgment are widely used and broadly seen by the legal community to be very useful in ensuring that cases are dealt with at the appropriate point in litigation, whether by dismissal or allowing the case to be continued. The Committee's consideration revolved around several issues, including whether the test for use of the rule should be mandatory or discretionary; whether the current test is adequate; and what type of evidence should be required in support of such an application.

The Committee's position is that the test should remain subject to court discretion; that the current wording of the test should be retained; and that certain specific improvements should be made to the wording of the rule.

There are several other rules related to the operation of Rule 159, namely Rules 160 through 164. The Committee decided to retain Rules 160 and 161, but delete Rule 163.

F. Summary Trial Procedure

Currently counsel (or the litigant) must choose between a one-stage and a two-stage application for use of the summary trial procedure. ALRI consultations with

the legal profession indicated that the two-stage process is considered to be onerous because counsel must provide to the judge at the first stage the same information that must be provided to the judge at the second stage. The Committee's position is that there should be a one-stage procedure which could be rebutted on application by a respondent who thinks it is inappropriate under the circumstances.

The Committee then reviewed the tests which have been applied in determining whether a matter is suitable for disposition by way of summary trial. The Committee decided that the test in the rule should be a general statement such as that set out in Rule 158.4(1)(b); the test should be stated positively but remain discretionary (using the word "may" rather than "shall"). The Committee's position is that evidentiary requirements should not be set out in the rule.

The Committee's discussions and review of case law identified a conflict between Rule 158.3 and the provisions of the *Jury Act*. Bill 10 was passed by the Alberta Legislature on March 10, 2004, amending section 17 of the *Jury Act*, allowing a judge to direct that a proceeding be tried pursuant to the summary trial procedure in The Rules even if there has been an order for a jury trial. This amendment has removed the conflict.

G. Streamlined Procedure

The basic issue considered by the Committee was whether it was worthwhile having a separate streamlined procedure for claims under a certain dollar amount, when we have several other methods of achieving an expeditious resolution available in The Rules. Since the Management of Litigation Committee has recommended that there be separate "tracks" for different types of cases, this Committee felt that the Simple Track under that recommendation should replace the streamlined procedure.

Given this major decision to eliminate the streamlined procedure, the other issues that the Committee proposed considering did not have to be addressed.

H. Combining Summary Disposition Procedures

Since there are overlaps between the purpose and requirements of various summary disposition procedures, the Committee considered whether it would be useful to combine some of them in order to shorten legal proceedings.

Would it be easier for the court to grant judgment on part of a claim if Rules 129 and 159 were amalgamated? Since the tests under Rule 129 for striking out an action and under Rule 159 for dismissal of an action are so strict, some legal commentators had indicated in the ALRI consultation that a combined rule might make sense. However, after due consideration of this issue, the Committee's position is that the two rules should remain separate. In Alberta we have maintained the distinction between applications merely considering the sufficiency of the pleadings under Rule 129, and applications for dismissal on the merits under Rule 159. The Committee felt this should continue.

Similarly, while there are some reasons why it might make sense to combine Rule 159 with the summary trial procedure under Rules 158.1-158.7, the Committee decided that the functions of the two rules are too different to amalgamate them.

Likewise, the Committee's position is that Rule 129 should be kept separate from Rules 220-224 (which will be re-written as a new Rule 221). Rule 129 is usually used at or near the beginning of an action to test the sufficiency of pleadings, while Rules 220-224 can be used at any time in an action to determine a point of law.

Finally, the Committee considered whether Rules 158.1-158.7 and the new Rule 221 could be conveniently joined in one rule, as the test for both rules is the substantially the same. However, as the need for trial of an issue still arises in some cases where the matter cannot be disposed of using written material, the Committee felt that the two rules should probably be kept separate.

The Committee's position is that all of these various rules relating to early disposition without trial should be placed as closely together in the new rules as

possible, to ensure that all options for shortening legal proceedings, improving access to justice and making legal proceedings more economical and efficient are considered. The exception is Rule 129, which should remain in the Pleadings section of The Rules.

I. Default Procedures

Default procedures can be broken down to three major phases:

1. Time to Respond

After the statement of claim has been served, the defendant must respond to the claim within the specified period of time by filing and serving a statement of defence or demand of notice. The defendant currently has 15 days within which to file and serve a response, unless otherwise specified in an order for service *ex juris* or a substitutional order. The 15 day time limit can also be extended by agreement.

2. Failure to Respond

In the absence of the defendant's response to the statement of claim within the prescribed time, the plaintiff, at their leisure, chooses one of the following options:

- file a noting in default;
- enter a default judgment;
- apply *ex parte* for final judgment;
- serve the defendant with notice of an assessment hearing; or
- do nothing at all.

The option chosen by the plaintiff will be dependant, in part, on whether the claim is for a debt/liquidated demand, or for unliquidated damages. However, up to the point in time that the plaintiff takes an active step, and regardless of the amount of time that passes, the defendant continues to have the ability to file a statement of defence or demand of notice.

3. Setting Aside

If a judgment is obtained against a non-defending defendant, there are remedies available to the defendant to set aside or vary the judgment depending on the circumstances under which it was obtained. For judgments obtained

administratively or without notice to the defendant (i.e. default judgment), the remedy is an application to vary or set aside under Rules 157 or 158. Where the judgment is obtained on notice to the defendant, there may be a remedy available to set aside under Rule 257, or the defendant may simply have to appeal the judgment.

This first section in this chapter deals with the procedure for responding to a statement of claim. The Committee considers what is the appropriate amount of time for responding to a statement of claim and whether an intermediate pleading should be adopted to extend the time to defend. Given the significant implications that would arise from extending the time to defend, particularly for those actions which typically go undefended, the General Rewrite Committee prefers to canvas the legal community for its input on three possible options. Also in the first section, the Committee considers the issue of whether there should be a cap on agreements to extend time to defend and, after canvassing the problems with the Ontario model, suggests that no cap be adopted.

In the next section, the Committee reviews the purpose and utility of the demand of notice. The Committee considers whether it should be retained as a pleading and, if so, whether it should be combined with an intermediate pleading that would also function to extend the time to defend. The Committee supports the continued use of the demand of notice in its current form and prefers that it be retained, regardless of whether an intermediate pleading is adopted for the purpose of extending time to defend. The Committee also suggests that a provision be added to make explicit the requirement that a defendant must seek leave of the court to file a statement of defence after having first filed a demand of notice.

The Committee then considered several issues related to the actual commencement of default procedures. First, it looked at Rule 142 which requires a defendant to file *and* serve a statement of defence/demand of notice to avoid being noted in default. The Committee decided that, although service should continue to be a necessary step, a filed but not served response from the defendant should not enable a plaintiff to commence default proceedings. Instead, the Committee thought that the defendant should be subject to a costs consequence if the plaintiff

has to do a court search in order to determine whether the defendant has responded to the claim.

The Committee also considered whether the process of noting in default should be replaced by a "pleadings closed" rule, which would be triggered by the passing of time, rather than the filing of a document. In concluding that the noting in default should be retained, the Committee considered the philosophical question of whether the commencement of default procedures should remain plaintiff driven or whether it should become time driven. The Committee is of the opinion that default proceedings should continue to be initiated at the leisure of the plaintiff, but prior to the plaintiff entering judgment or noting in default, the defendant will continue to have the ability to respond to the claim.

In the next section, the Committee considered the separate procedures currently in place for liquidated and unliquidated demands vis-a-vis default procedures. Generally speaking, undefended claims for debt or liquidated demands are administratively entered without notice to the defendant, whereas undefended claims for unliquidated demands require judicial approval on notice to the defendant. The Committee considered whether the existing procedural distinction should be maintained, or whether the process for all undefended claims (liquidated or unliquidated) should be made uniform. The Committee concluded that liquidated claims will continue to be administratively entered and judicial approval will continue to be required for unliquidated claims.

The Committee next reviewed the two existing options for a plaintiff to obtain judgment for undefended unliquidated claims. Although both require judicial approval, some applications for judgment may proceed *ex parte*, while other claims proceed by way of an assessment hearing on notice to the defendant. The Committee is of the view that the two options currently available to the plaintiff should be reduced to a single option so there is a standard approach to all applications for judgment involving unliquidated claims. There is no significant policy reason to justify notice all of the time or even most of the time and the purpose of notice in the first place is obscure. As such, the Committee suggests that all applications for final judgment involving claims for unliquidated damages

be commenced on an *ex parte* basis. A standard approach will eliminate the confusion of choosing one process over the other. It will also eliminate the risk that an application will unnecessarily proceed by way of assessment.

The rule should enumerate the following options available to the judge at the *ex parte* hearing:

- give final judgment;
- direct an accounting of damages;
- adjourn the application and order additional evidence (affidavit or *viva voce*);
- dismiss the action;
- order that the action proceed to trial and that notice be given to the defendant; or
- make such further order as may be just.

This proposal replaces the term "assessment hearing" with the word "trial" to make explicit the fact that *viva voce* evidence would be permissible in that context.

The Committee also debated the continued use in the rules of the terms "liquidated" and "unliquidated." The committee noted that these terms are not descriptive and, therefore, not intuitive. Other jurisdictions in Canada and throughout the world were canvassed and, although the terms "liquidated" and "unliquidated" are consistently used in all jurisdictions across Canada, many jurisdictions outside of Canada have departed from the use of those terms in favour of plainer language. The Committee seeks input from the profession on whether the Alberta rules should retain the current terminology or whether more plain language terms should be adopted and, if so, what the preferred terms would be.

The Committee also considered whether Rules 5(1)(i) and 148, which pertain to liquidated demands, need to be revised to take into consideration the statutory right to claim interest under the *Judgment Interest Act*. The Committee is of the view that the substance of Rule 148 is accurate and need not be revised. The Committee recommends, however, that the rule be redrafted so that it clearly

reflects the intent of the *Judgment Interest Act*, namely, that where the calculation of interest is based on a set rate it can form part of the default judgment, but where the calculation of interest requires the exercise of discretion, interest should not form part of a default judgment. The Committee is also of the view that the definition of "liquidated demand" in Rule 5 should state clearly that interest claimed at a fixed rate pursuant to a contract or statute will form part of the sum capable of entry by default judgment.

The Committee does not take any position in this Consultation Memorandum in relation to Rules 157 and 158 which deal with the procedure for varying and setting aside of default judgments. Instead, these rules are addressed in Chapter 3 of Consultation Memorandum No. 12.10 which addresses the rules for varying and setting aside orders and judgments generally.

Lastly, the Committee considered several situation specific rules which require that leave of the court be obtained before default judgment can be entered. The rules considered were:

- Rule 16(2), which deals with the process for obtaining default judgment against a defendant when a solicitor fails to carry out his/her undertaking to file a statement of defence or demand of notice under Rule 16(1). The Committee thought this rule could be deleted;
- Rule 23(4), which requires the plaintiff to seek leave of the court in order to enter default judgment where the statement of claim has been served pursuant to an order for substitutional service under Rule 23(1). The Committee has previously suggested the deletion of the requirement to obtain leave from Rule 23(4);
- Rules 73, which applies when the defendant does not file a statement of defence or demand of notice, but nonetheless issues a third party notice, and Rule 74(1), which deals with the situation when the third party fails to defend and the plaintiff obtains a judgment against a defendant other than by default. Rule 73 stipulates that the defendant may, by leave of the court, have judgment against the third party to the extent claimed in the third party notice. Rule 74(1) gives the court authority to give judgment for the

defendant against the third party as the case requires. The Committee suggests the deletion of Rule 73 and the maintenance of Rule 74(1); and

- Rule 143, which provides that judgment shall not be entered against an infant or person of unsound mind on default except by leave of the court. The Committee previously stated that leave should continue to be required in this situation.

Consultation Memorandum No. 12.13
Judicial Review

Introduction

The Judicial Review Committee of the Rules Project was formed to look at Parts 56 and 56.1 of the Rules and to propose changes, if any, to bring the judicial review rules into line with the broader objectives of the Rules Project. The current judicial review rules are the product of ALRI's 1984 Report No. 40, *Judicial Review of Administrative Action*.[1] This Report is available in pdf format on the ALRI website, <http://www.law.ualberta.ca/alri/finalreports_pg3.html>. This review is the first assessment of the judicial review rules since then.

The Committee undertook its review by first soliciting input from the Bar and Bench on concerns related to Parts 56 and 56.1. After this initial consultation process, the Committee met and formulated a set of nine broad issues that formed the basis for its work. Issues were assigned to members of the Committee for in-depth research. In a series of monthly meetings, the Committee considered the memoranda prepared by members, discussed the issues raised therein, and arrived at a consensus on each of the issues.

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[1] Institute of Law Research and Reform, *Judicial Review of Administrative Action: Application for Judicial Review* (Report No. 40) (Edmonton, Alberta: Institute of Law Research and Reform, 1984) [1984 ALRI Report].

The basic approach in the 1984 Report was to adopt a single procedural route to obtain prerogative remedies on judicial review consisting of some special procedures engrafted on the general rules. Thus, where Part 56.1 is silent on an issue, Rule 753.19 makes the general rules apply by default.

Applications for judicial review are commenced by way of originating notice, and may be made in respect of the decision of any person who is subject to judicial review. Applications to set aside a decision must be made within six months of the decision under review. Applications must be served on the tribunal, the Attorney-General and every person "directly affected." Where the application is to set aside a decision, the tribunal must produce a return of its record of proceedings and other materials. In applications seeking other relief, the applicant must request an order producing the return. The Rules provide the court the usual breadth of remedial discretion on judicial review.

Proposals for Consultation

The Committee's guiding principle in reviewing Parts 56 and 56.1 was to avoid a self-contained code of rules for judicial review, and to strive for specialized rules, where necessary, built on the existing foundation of the general rules. For the most part, the current use of the general rules as a default (Rule 753.19) remains the most appropriate model.

At the same time, the Committee recognized, as did ALRI in the 1984 Report, that special procedures or other departures from the model in the general rules are required by certain important distinctions between public law litigation and ordinary civil litigation. The Committee's litmus test for raising proposals for reform was, in considering each issue outlined below: "Is there any basis rooted in the uniqueness of judicial review proceedings for departing from the general rules on this issue?"

We concluded that the overall scheme under Part 56.1 is appropriate and that changes are needed only in a few areas. The following outline covers the areas in which the Committee proposes reform.

In CHAPTER ONE, we propose that the Rules be reformed to clarify that they cover statutory rights of appeal, stated cases and controverted elections. However, we also propose that in these circumstances the rules give way to any procedures set out in external legislation governing those access-to-court processes. As well, the Committee proposes repealing Part 56 altogether, seeing it as redundant.

In CHAPTER THREE, we propose that the time for delivery of judicial review materials in cases seeking to set aside a decision be the existing six months for commencing proceedings, plus 14 days for service. In addition, we propose that the Rules clarify that while service on the tribunal and the Attorney-General remains mandatory within this time frame, a failure to do so is not fatal to the application if the Attorney-General or tribunal waives the defect.

In CHAPTER FOUR, we propose that any affidavits on judicial review be filed and served "as soon as reasonably practicable" rather than 10 days before the date named in the originating notice for the hearing (R. 406).

In CHAPTER FIVE, we make FOUR basic proposals about returns.

1. We propose that the Rules better clarify the options available to an applicant for obtaining a return in cases where they are not seeking an order to set aside the tribunal's decision (i.e. when a return is not mandatory)
2. We propose confirming the court's ultimate discretion to vary the scope of the return, whether on its own motion or at the request of one or both parties.
3. We propose more precision in describing the tribunal's obligations in cases where they propose to deliver an incomplete or amended return.
4. We propose that the time frame for producing the return should be described as "as soon as reasonably practicable."

Also in CHAPTER FIVE, we propose clarifying that the usual rules about discovery do not apply on judicial review, and adding a requirement to obtain the leave of the court before issuing a notice under Rules 266 or 267.

This Consultation Memorandum covers selected issues on which the Committee deliberated. Except for the proposals we make on those issues, the Committee defers to the principles espoused in the ALRI's comprehensive 1984 Report on judicial review and suggests no other changes to the Rules in Part 56.1.

Consultation Memorandum No. 12.14
Miscellaneous Issues

As evidenced by the title "Miscellaneous Issues", Consultation Memorandum 12.14 is a mixed bag of topics. It consolidates the following areas of The Rules: 1) Time; 2) Time for Service of the Statement of Claim; 3) Delay in Prosecution; 4) Discontinuance; and 5) Noncompliance and Irregularities.

Chapter 1 deals with time and vacation. Currently, the Rules contain over thirty different time periods ranging in duration from 24 hours to 10 years. Most of these time periods are under 30 days and many are roughly equivalent. The General Rewrite Committee proposes to replace these 30-some time periods with a smaller number of standard time periods. The principal ones would be 24 hours, 5 days, 10 days, 20 days and 1, 2, 3, and 6 months. Rules 548 and 549 would be retained to allow for the extension or abridgment of time.

The current principles for calculating time are also overly complicated. The Committee proposes that The Rules should contain a complete set of principles for calculating time; that time should be expressed in hours, days, months and years; and that "clear days" should be abolished. Wherever possible, time periods should be counted forwards rather than backwards. If time expires on a day when court offices are closed, time should be extended in the same direction that the time period runs. The time for delivering and amending pleadings should continue to run during court vacations. Whether or not trials should be held during the vacations is best left to the courts to decide.

Chapter 2 deals with time for service of a statement of claim. Currently, Rule 11, in effect, requires service within 1 year, subject to the court's power to grant one extension of 3 months on an application brought within the year. The General Rewrite Committee currently favours retaining Rule 11, but it seeks the opinions and input of the profession on four possible options for reform of Rule 11 before making a final recommendation. One option is the status quo. The other options involve an initial 6 months for service with choices between a) a single 3 month extension on application before the expiration of the 6 months; b) a single 3 month extension on application brought within a year of the filing of the statement of claim; and c) a single extension which would be for 3 months with a court discretion to substitute another term.

Rule 11(9) allows the court to renew a statement of claim for 3 months if specified waiver or estoppel circumstances exist. The Committee seeks input from the profession as to whether the court should be given a general discretion to extend the time for service. This would include an extension under the circumstances specified in Rule 11(9). It would also cover the situation in which an untraceable defendant surfaces after the time for service has expired and successfully applies to set aside an order for substitutional service and a consequent default judgment.

Chapter 3 deals with the issue of dely of prosecution. There are currently three options available to address inordinate delay: 1)the parties may agree to move an action along on the basis of an agreed upon schedule; 2) the court has discretion to dismiss actions or impose terms where inordinate delay has prejudiced a party; and 3) actions (in theory) are subject to automatic dismissal on application if there is undue delay, being more than 5 years since a thing was done that materially advances an action (the "drop dead" rule) . Subject to some minor revisions, the General Rewrite Committee proposes to keep these three options for dealing with delay. The Committee thinks that these rules will continue to be useful even if the Management of Litigation Committee's proposal that parties in every action agree to a litigation schedule early in the action is adopted.

The Committee's view is that the drop dead rule should be retained, but it should provide that once 5 years has passed since the last thing that materially advanced an action, it should not be open to the defendant to avoid the operation of the rule by taking a step before the application to strike is filed.

Lastly, with respect to the delay rules, the Committee also proposes that the court should have discretion to make any orders necessary to deal with third party notices and counterclaims that may be affected by an order for dismissal due to delay.

Chapter 4 deals with discontinuance of an action and also with the withdrawal of a defence. Depending on the circumstances, there are several possible ways for a plaintiff to obtain a discontinuance: 1) the plaintiff may unilaterally discontinue; 2) the parties may agree to discontinue; or 3) the court may give leave for the action to be discontinued. Leave is required for a unilateral discontinuance after the action is set down for trial, and for a discontinuance with consent after the trial has commenced. The General Rewrite Committee seeks input from the profession on four possible options for when the plaintiff should be required to seek leave of the court to discontinue an action. These include: a) retain the discontinuance rules in their present form; b) add a requirement for leave to discontinue without consent where a defendant has defended (so as to enable a defendant to insist on the cause of action being disposed of); c) drop the requirement of leave except in cases involving multiple plaintiffs; and d) eliminate all requirements for leave and add a rule that would allow any affected party(s) to apply for relief.

Along with the issue of when leave should be required to discontinue, the Committee also seeks input on the following two issues: whether a defendant should continue to be required to obtain leave of the court in order to withdraw a defence where consent of the plaintiff has not bee obtained, and whether a plaintiff should be allowed to discontinue against one defendant without the consent of the other defendants.

Chapter 5 deals with noncompliance and irregularities. Rule 558 provides that non-compliance with The Rules does not render any act or proceeding void but that the act or proceeding may be set aside or amended. The Committee proposes that one rule along the lines of Rule 558 should deal with non-compliance and irregularities in pleadings, affidavits, forms and steps in actions. No defect should void any of these things unless, as the Court of Appeal has stated, some real possibility of prejudice to the attacking party is shown or unless the procedure is so dramatically devoid of the appearance of fairness that the administration of justice would be brought into disrepute. The Rules should not give the court power to dispense with compliance of The Rules before the fact.

Consultation Memorandum No. 12.15
Non-Disclosure Order Application Procedures in Criminal Cases

This summary highlights only some of the issues that the Committee discussed and proposals which it reached. The complete discussion of all issues and Committee proposals is contained in the consultation memorandum.

Chapter 1 describes the authority to make rules of court for criminal litigation, and the nature of federal involvement in establishing criminal rules of court.

Chapter 2 discusses the general substantive and procedural doctrine that must be accommodated by any rules of court respecting non-disclosure orders. The foundational authority is the Supreme Court's *Dagenais* case. Essentially, open courts and unhampered public access to litigation information are the rule. Any limitations must be justified – through a balancing process – as reasonable, minimal, and proportional. Procedurally, balancing requires an application on notice. The media, as representatives of the public, must receive notice and should be accorded appropriate standing in the hearing. *Dagenais*, however, does not provide an exhaustive procedural code.

Chapter 3 describes current legislation and common law non-disclosure mechanisms, which exist in the shadow of *Dagenais*. These mechanisms can be classified into three main groups – *in camera* orders, sealing orders, and publication bans. Publication bans include common law inherent jurisdiction bans, which are discretionary; and statutory bans. The statutory publication ban environment is complex. There are four subtypes – "*per se* mandatory publication bans," "mandatory on application bans," "presumptively mandatory bans," and "discretionary on application" bans. The *Dagenais* procedural standards should be applied to applications for *in camera* orders, sealing orders, inherent jurisdiction publication bans, and discretionary on application statutory publication bans.

Chapter 4 reviews current rules respecting non-disclosure order applications in Nova Scotia and Alberta. The 1997 Court of Queen's Bench Criminal Practice Note No. '4', the 2004 Provincial Court Practice Note respecting non-disclosure orders, and the 2004 Court of Queen's Bench Civil Practice Note respecting non-disclosure orders are compared and contrasted.

Chapter 5 sets out the issues for Court of Queen's Bench Criminal Rules of Court reform in the area of non-disclosure orders.

Chapter 6 provides the Committee's proposals respecting rules for non-disclosure order applications before the Court of Appeal. The Committee's view is that rules should simply provide that the Court of Appeal shall follow the Court of Queen's Bench Rules, with any necessary modifications.

Consultation Memorandum No. 12.16
Trial and Evidence Rules – Parts 25 and 26

A. Introduction

The General Rewrite Committee ("the Committee") was struck to consider a wide range of issues that fell outside the scope of the various other Committees. This consultation memorandum deals with one of those issues, the Trial and Trial

Evidence Rules, which are currently found in Part 25 (Rules 245-260) and Part 26 (Rules 261-265 and 292-296.1).

B. Trial Rules

Part 25 of the Rules deals exclusively with Trial Rules. Part 26 deals with Evidence, both in and out of Court. This consultation memorandum deals only with those Rules under Part 26 that relate exclusively to evidence at trial. The remaining rules in Part 26 were addressed by the Discovery & Evidence Committee in their Consultation Memorandum 12.7.

The rules discussed in this consultation memorandum are disparate and were, accordingly, dealt with almost on an individual basis, except where rules dealing with a particular subject area (jury trials, or witnesses, for example) could be meaningfully grouped together for analysis.

The rules in issue were felt to fall into one of three broad categories, dealing with either procedural, evidential or (arguably) substantive matters. Overall, the Committee felt that the rules in the latter were useful, but that several of them amounted to little more than statements of certain aspects of the court's inherent jurisdiction to control its own processes. Recommendations are made herein to remove those Rules, on the clear understanding that in doing so, the Committee is in no way attempting to change the law or negate or limit existing principles of the Court's inherent jurisdiction as a result.

C. Procedural Rules

Rules 245 and 246, both of which deal with the non-appearance of parties at trial, were felt to be necessary but repetitive. It was agreed that their substance should be carried forward but that the two rules should be merged into a single rule.

Rules 252 and 253, which deal with views, were dealt with in a similar fashion: they are to be retained, but merged.

Rules 251, 155 and 256 were felt to be mere expressions of the Court's existing inherent jurisdiction to control its own process. As one of the objectives of

the Rules project is to streamline the Rules in their entirety, the Committee has recommended removal of these Rules.

Research showed that Rule 255.1 was added to the rules as part of a bundle of new rules intended to address issues relating to very long trials. As of the date of its review by the Committee, there had been no judicial consideration of Rule 255.1. Only one other province (Saskatchewan) has an analogous rule and it has not received any judicial consideration, either. The Committee agreed that inherent jurisdiction and the Cost process were already in place and well-suited to dealing with the issue of unreasonably long trials, such that Rule 255.1 is unnecessary.

Rule 260, the non-suit rule, was felt to be necessary and useful and its retention was recommended.

Rule 247 was felt to go too far in allowing for exclusion of a party from trial, and might even constitute a Charter breach if applied. The Committee felt that the analogous Ontario provision, which does not allow the judge to exclude a party but does allow the judge to order that a party give evidence before the other witnesses are heard, was more appropriate.

Rule 248 has been criticized as forbidding the Court to allow a defendant to make an early opening statement in jury trials, thus constituting a fetter on the Court's discretion to control its own process. It was agreed that the rule should be amended to allow for such a change in the ordering of opening addresses in civil jury trials, on application by a defendant.

Rules 258 and 259 deal with the procedures to be followed in the event of disagreement by a jury (leading to a declaration of a mistrial, in essence). Examination of similar rules from Ontario and British Columbia revealed the existence of an option not currently available in Alberta, the option of choosing to proceed before the presiding judge alone rather than wait for a new trial. It was felt that this could have a very desirable effect of reducing delays and trial time in the event of a mistrial, and adoption of a similar provision is recommended.

D. Substantive Rules

Rule 250 codifies an exception to the archaic, but still operating, common-law principle that damages are assessed as at the date an action is commenced, rather than the date of judgement. It was felt that the rule should accordingly be retained.

Rule 254 was considered and discussed at length. The rule is written such that it can be interpreted in one of two ways. The narrower interpretation is that it provides a procedural mechanism for giving notice in a situation where a defendant who has not pleaded justification in a defamation action intends to adduce general evidence of the character of the plaintiff in mitigation of damages. This interpretation is consistent with the common law but adds some specificity as regards how notice is to be given. The broader interpretation, which is allowed by the wording of the rule, is that it allows such a defendant, upon giving notice in accordance with the Rule, to give evidence of particular instances of wrongdoing in mitigation of damages. This has never been allowed under the common law. The Committee felt the Rule should be retained but rewritten so as to ensure the only possible interpretation was that the rule provides a procedural mechanism for giving notice where a defendant intends to adduce general evidence of character, as allowed by the law.

E. Evidentiary Rules

Rule 249, although currently located in Part 25 rather than in Part 26, was felt to be an evidentiary rule, as it relates to the re-opening of a trial to introduce additional evidence. The Committee recommended retaining it, subject to revision for clarity.

No issues were identified with regard to Rules 261 and 261.1 and it was recommended they be retained.

Rule 262 was criticized as being, perhaps, unnecessary. It appeared to the Committee that there was no issue that evidence from trial should be available in subsequent proceedings, such as costs hearings or appeal. It was felt, however, that this point is not so obvious as to warrant removal of Rule 262.

Rule 263 was the subject of considerable discussion. It, like Rule 254, was felt to be worded so as to suggest an alteration to the common law. In this case, the rule seems to suggest that evidence from one proceeding may be used without limit in any other proceeding. This is, of course, contrary to the hearsay rules of evidence. Analysis of the case law, and the ways in which Alberta Courts have applied the Rule, indicated that Rule 263 has been read down such that applications under it are only allowed where the person against whom such evidence is to be given had the opportunity to cross-examine the declarant when that declarant was examine, when the same parties were involved in both matters, and where the same matters were in issue in both proceedings. That is, in short, already the common law in this matter, as set out over a century ago by the Supreme Court of Canada in the Town of Walkerton v. Erdman (1894), 23 S.C.R. 352. Accordingly, the Committee felt the Rule should be removed as it appears not to have codified this long-established exception to the hearsay rule but, rather, to have created confusion surrounding it.

Rule 264 and 265 were reviewed and the Committee agreed that, although they differed in some respects from sections 33 and 41(2) of the Alberta Evidence Act, they were to a considerable degree redundant. Accordingly, their removal was recommended.

Rules 292 - 296.1 deal with the calling of witnesses. The only issues identified in respect of the witness rules had to do with Rules 292 and 293, which appear to be somewhat redundant. Review of witness rules from other jurisdictions revealed that where there was more than one rule relating to the calling of witnesses, one such rule was a "hostile witness" rule. The Alberta rule cannot reasonably be interpreted as a hostile witness rule. Accordingly, there was considerable discussion as to whether or not Alberta should have such a rule. At the end of the day, it was agreed that it was unnecessary. Rule 293 allows one party to call any witness and, should that witness prove hostile once in Court, a simple application to the judge to treat the witness accordingly is all that is required. The Committee recommended, therefore, that Rule 292 be subsumed into Rule 293.

Consultation Memorandum No. 12.17

Costs and Sanctions

INTRODUCTION

This Consultation Memorandum invites comment about the numerous issues raised by it. It is the work of the Costs Working Committee of the Rules of Court Project. Part I covers the subject of Costs. Part II covers the subject of Contempt.

PART I – COSTS

Party and Party Costs

The Committee proposes the following general principles:

- a preamble to the costs section of The Rules highlighting principles of fairness, predictability and efficiency;
- a default system of partial indemnity for lawyers fees;
- retain the existing factors guiding the court's discretion in costs awards, but add the extent of success of a party as an additional factor.

Views are sought on the following topics:

- how court discretion should be exercised;
- how to keep a tariff like schedule C up to date;
- whether a party should ever be entitled to more than full indemnification;
- whether expenses incurred before action should ever be included in party and party costs.

Changes to Tariff Items

The Committee suggests:

- a specific item for a review of produced records;
- a specific one-time only item of preparation for examination for discovery;
- a specific item for motions to compel, later abandoned.

Items not to be added:

- judicial dispute resolution;
- summary trial;

- appeals to Court of Appeal on interlocutory motions.

Views are sought on whether a specific item for settlement should be added to the tariff list.

Other Tariff Items

The Committee suggests some amendments:

- continue the rule that the costs of an interlocutory proceeding must be paid by the unsuccessful party forthwith in any event of the cause, but exclude *ex parte* proceedings;
- interlocutory motions excluding *ex parte* motions, continuing the rule that costs are payable in any event of the cause;
- the Committee believes that Schedule C amounts are adequate, but asks whether the rules should address the issue of multiple column amounts;
- the Committee suggests a tariff guideline of two-thirds of the normal costs for self-represented litigants;
- Committee seeks the views of the profession on how costs should operate where an action has been commenced in Queen's Bench that could have been commenced in Provincial Court.

Miscellaneous

Minor changes are suggested to:

- compromise using court process, including deleting Rules 166 to 160;
- security for costs;
- costs of litigation representatives;
- solicitors liens and charging orders.

Costs as Sanctions

The Committee makes the following suggestions with requests for comments as indicated:

- an omnibus rule for costs as sanctions;
- should the omnibus rule contain factors?;
- carry forward existing rules relating to
  - Rule 128 (failure to admit);

- Rule 230 (non-admission after notice to Admit);
- objections to admissibility of expert reports;
- Rules 599.1 and 602 in respect of failure to comply and counsel liability.

Taxation

The Committee suggests the following changes relating to taxation:

- a change in terminology introducing terms such as "assessment" and "assessment officer";
- reorganised rules;
- retaining powers of taxing officers;
- retaining process for party and party costs taxation;
- create a statutory foundation for taxation of solicitor and client accounts;
- retain taxing officers' discretion in solicitor and client accounts;
- retain provisions for taxation of contingency fees, and extend to retainer agreements;
- remove taxation time limits in The Rules;
- require an affidavit in support of an application for judgement after taxation, to outline liability and amounts outstanding including interest.

The Committee seeks the views of the profession on the following questions:

- Should court clerks who do taxations receive annual training?
- Should all solicitor-client taxations be done by specially qualified taxing officers?
- Should a specially qualified roving taxing officer be appointed to do solicitor-client taxations outside Edmonton and Calgary?
- How much discretion should a taxing officer have in adjusting the fees fixed in the tariff? Should more or less discretion be given to the taxing officer?
- Should a specialized taxing officer serve as a first level of appeal from the taxation decisions of clerks?
- Is it feasible to increase the jurisdiction of taxing officers:
  (i) to deal with the question of apportionment between lawyers in the case of a contested contingency fee?

(ii) to vary regular retainer agreements, similar to their powers in dealing with contingency agreements?

PART II – CONTEMPT

The Consultation Memorandum canvasses the rules relating to contempt (Rules 701 to 704, and Rule 366(b) which relates to directors of a corporation), and discusses a number of issues relating to those rules. In the Costs Committee's view, these rules, together with the related jurisprudence, are satisfactory. The Committee does not propose any changes.

Consultation Memorandum No. 12.18
Self-Represented Litigants

INTRODUCTION

This Consultation Memorandum raises questions about the operation of The Rules in cases involving self-represented litigants, and invites comment on the positions tentatively taken. Because self-represented litigants fall within the category of matters that relate to revision of The Rules as a whole, it is the work of the Steering Committee rather than a Committee specially designated to consider issues relating to a particular subject matter.

Our civil justice system is built upon the professional roles of judges and lawyers. Most litigants appearing in the Court of Queen's Bench and Court of Appeal have legal representation. Nevertheless, the law recognizes the right of a person to represent themself in court, and the incidence of self-representation is growing.

The Steering Committee recognizes that The Rules constitute a very small piece of the response required to adequately address the issues surrounding self-represented litigants. A full response would require the collaboration of all stakeholders in the civil justice system.

BASIC POSITION

The Committee's basic position is that the same procedural requirements should apply to all persons who turn to the civil justice system for the resolution of legal issues. Self-represented litigants must understand that they are responsible to perform the tasks and carry out the functions ordinarily required of professionally-trained lawyers.

Self-represented litigants will benefit from some of the rules changes stemming from our Project objectives that apply to all litigants. These include simplifying legal procedures, making The Rules easier for everyone to understand and maximizing the effectiveness of their use. As well, some protection is provided to all litigants by the overarching duty of judges to ensure procedural fairness in all proceedings.

AUDIENCE BEFORE THE COURT

The Committee proposes very few changes to Part 1.1.

Rule 5.2

No change is proposed to the basic policy of representation by a solicitor.

Rule 5.3

The Committee accepts the right of self-representation as a given for most individuals. However, corporations and persons acting on behalf of a person under legal disability or serving in a representative capacity generally cannot self-represent. The rules should clarify that the court has discretion to allow them to do so in appropriate circumstances.

Rule 5.4

The Committee does not propose any change to Rule 5.3 insofar as it recognizes the jurisdiction of the court to permit a non-lawyer agent to appear in court in extraordinary circumstances. At present, a motion for permission to appear may be made *ex parte*. The Committee proposes that the motion be brought on notice to all parties and, where possible, in writing.

The rule should be refined to recognize the jurisdiction of the court to allow assistance in court that falls short of representation. A person who helps a litigant in this way is known as a "McKenzie friend." The litigant is still self-representing. The assistance may consist of quiet suggestion, note-taking, moral support and the like.

The Committee recognizes that self-represented litigants may need help outside the courtroom as well as in court. Generally speaking, the Committee does not consider a project on rules reform to be the appropriate vehicle for reform in this area. However, it notes that a number of forms will be developed as part of the Rules Project, and this should ease the difficulty for self-represented litigants in some litigation.

CHANGES TO THE RULES GENERALLY

We have stated the Committee's basic position that the same procedural requirements should apply to all litigants. The Committee thinks it would be useful to set this position out in a rule. Federal Court Rule 122 could serve as a model, but should except situations where the rules otherwise provide.

The Committee observed that some procedures are difficult to apply to self-represented litigants. It considered whether changes should be made with respect to solicitor's undertakings, the preparation of orders, or access to confidential information. It concluded that the difficulties can be adequately handled by rules that apply to all litigants.

The Committee considered the possibility of modifying certain rules to better accommodate self-represented litigants. Here, again, it concluded that universally applicable changes to the rules will usually be adequate, although exceptions may be justifiable in some instances.

The Committee considered whether self-represented litigants should be subject to any special procedures such as mandatory attendance at court information sessions, participation in an alternative dispute resolution process, or

placement on a special litigation track. It concluded that it is preferable to rely on the procedures that apply to litigation generally.

To sum up, in the Steering Committee's view, with rare exception, self-represented litigants should not be subject to requirements that are different from or additional to those imposed on litigants who are represented by counsel, excused from meeting the procedural requirements that are imposed on litigants represented by counsel, or placed in a separate litigation stream.

E-Commerce

ALRI has a watching brief on this and a number of related topics. The initial work was done through the Uniform Law Conference of Canada (ULC) to which the Director is a delegate, and then through the Commercial Law Strategy of the ULC, where the Director was a member of the Steering Committee. Most recently, the Director chairs the advisory committee which oversees the ULC work in the broader commercial law context.

Enduring Powers of Attorney

Final Report No. 88 (published in February 2003) dealt with the question of whether additional formalities should be legislated to protect against abuse of enduring powers of attorneys. As a post-script to Report No. 88, questions arose regarding the general practices and duties of attorneys, along with the current understanding and awareness of those practices by family members and others who are affected by the exercise of enduring powers of attorney. These issues were common to all four western provinces and, as a result, the joint western Canada project decided to focus on these issues as possible areas for reform.

A joint consultation paper, entitled: "Enduring Powers of Attorney: Areas of Reform" was published in April 2004. The paper covered three main areas. The first area deals with facilitating recognition of EPAs within and between the western provinces. The second areas focuses on clarifying duties of attorneys, and the third area deals with issues for third parties interacting with attorneys, including problems of suspected abuse and misuse of EPAs by an attorney.

Upon the distribution of the consultation paper, each province undertook a consultation process whereby comments were solicited from stakeholders. Following the initial consultations, ALRI and the other three institutes met to develop tentative policy recommendations and to identify outstanding issues.

Following these meetings, a second round of targeted consultations was initiated in each province to obtain feedback on the proposed recommendations and to get direction on outstanding issues.

The four provinces will meet in the fall of 2005 to finalize the recommendations and a draft final report will be prepared shortly thereafter.

Marshalling Rules

We dealt with the general question of order of application of an estate's assets in satisfaction of debts and liabilities in Report for Discussion No. 19, issued in September 2001. Rather than issue a separate final report on this discrete topic, we have decided that our final recommendations in this area should be included as part of the Succession Project's final report concerning Administration of Estates. This final report will be issued in due course, but for the moment, we still anticipate that any window for legislation in the succession area will not open until at least 2006.

Matrimonial Property Act

Preliminary consultation with the family law bar was undertaken to determine whether there are issues with the legislation that should be addressed. The legislation is now almost 30 years old and significant changes have occurred in the surrounding context. While there are several issues that might require some adjustment, one practical problem that requires more immediate attention is the timing of valuation. We are dealing with this issue as a discrete topic.

Rules of Court

The Rules Project has now moved fully into the drafting and final stages of the work.

By the end of summer 2005, most of the drafting instructions were complete and initial drafts prepared on most topics. Two topics are yet to be completed – Costs and Sanctions will review the feedback on Consultation Memorandum 12.17 and Appeals will its consultation memorandum in early 2006.

Reviewing the draft at this stage marks a major shift in our emphasis and approach. We started with the working groups and the consultation memoranda on specific parts of the Rules. Those working groups developed policy and, after reviewing all the consultation and any necessary further research, produced final policy positions. From that policy statement working group counsel produced drafting instructions for work by the drafter. At this stage, we are beginning to look at the big picture and to see how all of the individual parts or pieces fit together. It is important to note that the drafting process and fitting all the pieces together creates a new dynamic. This particular draft is based on a multitude of earlier drafts and discussions, and while a great deal of effort has been expended to be true to the drafting instructions, many issues, both large and small have been dealt with in the course of getting to this draft. In some cases the drafting process has resulted in alternative suggestions and requests for a review of earlier policy decisions and instructions. In other cases, the drafting has resulted in significant rewriting of rules to be retained, but using modern language to maintain a consistent style.

Once this process has been completed, a consolidated draft will be circulated for review by the working groups and the Institute Board and Rules Project Steering Committee before a test version is available for more general release.

The list of Consultation Memoranda and their status is as follows:

No.	Title	Date of Issue	Date for Comments	Drafting Instructions
12.1	Commencement of Proceedings in Queen's Bench	October 2002	January 31, 2003	complete
12.2	Document Discovery and Examination for Discovery	October 2002	January 31, 2003	complete
12.3	Expert Evidence and "Independent" Medical Examinations	February 2003	May 16, 2003	complete
12.4	Parties	February 2003	June 2, 2003	complete
12.5	Management of Litigation	March 2003	June 30, 2003	complete
12.6	Promoting Early Resolution of Disputes by Settlement	July 2003	November 14, 2003	complete
12.7	Discovery and Evidence Issues: Commission Evidence, Admissions, Pierringer Agreements and Innovative Procedures	July 2003	November 14, 2003	in progress
12.8	Pleadings	October 2003	January 31, 2004	complete
12.9	Joining Claims and Parties, Including Third Party Claims, Counterclaims and Representative Actions	February 2004	April 30, 2004	complete
12.10	Motions and Orders	July 2004	September 30, 2004	complete
12.11	Enforcement of Judgments and Orders	August 2004	October 31, 2004	complete
12.12	Summary Disposition of Actions	August 2004	October 31, 2004	complete
12.13	Judicial Review	August 2004	November 30, 2004	complete
12.14	Miscellaneous Issues	October 2004	November 30, 2004	complete

No.	Title	Date of Issue	Date for Comments	Drafting Instructions
12.15	Non-Disclosure Order Application Procedures in Criminal Cases	November 2004	January 15, 2005	in progress
12.16	Trial and Evidence Rules – Parts 25 and 26	November 2004	January 15, 2005	complete
12.17	Costs and Sanctions	February 2005	March 25, 2005	complete
12.18	Self-Represented Litigants	March 2005	April 22, 2005	complete

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Succession Project – Wills Act

In the next phase of our ongoing Succession Project, ALRI has recently commenced its review of the *Wills Act*, which will lead to recommendations for reform of this important area of succession law. Virtually every aspect of the law of wills is to be examined, including issues dealing with execution, revocation, alteration, interpretation, lapse, disclaimer, ademption, gifts over and residue. Research of issues surrounding the creation of wills is underway. Consultation concerning draft recommendations in that area should occur later in 2005.

Title Insurance

Together with the Manitoba Law Reform Commission and the Saskatchewan Law Reform Commission, Alberta entered into a joint project on the topic of title insurance. After an initial draft prepared by Manitoba, further research conducted in Alberta indicated that the project was considerably more complicated than initially thought. In April 2005, the ALRI Board decided that further work on title insurance would have to be postponed until the completion of the Rules Project. At that time, the Board will consider its priorities and whether further research on title insurance is warranted.

In my last annual report, I referred to the dominant role that the Rules of Court Project has played in the Institute's work and its impact on other projects. I referred to the sheer size of the project, and the peculiar difficulties and challenges which a project of this size creates – the possibility of change in personnel, issues of motivation and recognition of contributions, and mobilizing a very large volunteer work force.

If I may adapt the old Chinese proverb to the Institute, it would be that, "we live in challenging times." It is responding to those challenges that provides the vibrancy to law reform work and drives the quality and comprehensiveness for which ALRI is well known.

Rules of Court Project

Challenge #1 – Commencing the drafting stage.
During this year, we were ready to bring our drafter, Mr. David Elliott, completely online with the drafting process. The first task was to translate the policy decisions of the various working groups into drafting instructions, creating a coherent statement to be used by the drafter. In addition, we also had to create a rational and coherent whole out of the various groups of drafting instructions into which we had previously subdivided the working groups. Finally, it then became necessary to manage and organize the resulting "organism" – managing the changes as we massaged and amended it. The more the whole grew, the greater the challenge in managing and organizing the amendments and improvements that we were able to make once we were able to see the shape of the whole rules.

Challenge #2 – Ensuring consistency between early policy research and eventual drafts.
In drafting it is essential to remain faithful to the policy decisions and the drafting instructions which represent them. It is vital to ensure that the draft does not drift from its policy basis. In order to ensure this consistency, we created "concordances" to be able to track our work, cross-referencing the new draft rules and the process by which we arrived at them – starting from the consultation memorandum, through the working group minutes and the decisions, to drafting instructions, and finally cross-referencing the new rules to the existing rules.

Creating this spreadsheet presented its own challenges – determining what elements should be contained in it, determining how to track the results of consultation feedback, and finally, and very practically, how to print the resulting spreadsheet on 11 x 17 inch paper.

Challenge #3 – Ensuring the end goal is not lost.

Any large project has ebbs and flows in enthusiasm and motivation. The volunteers who identified the need for change must wait for completion; those who have involvement in one small area must know of the other activities and their interconnection; and everyone must be aware of the pivotal role of translating policy proposals into drafts.

As we move from policy to drafting, the primary responsibility switches from the working groups to the counsel who must translate the policy decisions into drafting instructions, and then work with progressives drafts to ensure that the policy is faithfully represented.

Everyone must demonstrate the appropriate level of patience for the process to unfold.

Challenge #4 – Adjusting the process.

While the project plan attempted to contemplate as many issues as possible, still some adjustment is necessary. For example, shortly into the drafting stage it became difficult to keep the various segments separate. Very quickly, the lines of demarcation for policy purposes are less clear or are completely erased for drafting purposes. This has resulted in many more joint drafting meetings and the challenge of how to present the final draft to working groups in a way that explains where their proposals have gone and how they have been dealt with.

In this latter stage, therefore, we have revised our process and timetable frequently, creating the inherent challenge of how to explain to our consumers the phases of the project. Fortunately, our reporting opportunities are sufficiently frequent that we can keep progress reports up-to-date.

So the challenges have been to follow the plan, to produce a more clear and workable set of rules of civil procedures; and to do so in an inclusive manner with rigorous and comprehensive research and policy analysis.

Other ALRI Work

Last year I identified the impact of the Rules Project on our other projects, and the fact that counsel resources were focussed on the Rules of Court Project. This year allowed a potential or partial return to conventional projects.

Both of the joint projects with the other western law reform agencies continued. In one, Enduring Powers of Attorney, we were able to assume the lead role of structuring the consultation and writing the final report. In the other, much to our disappointment, we had to "park" our involvement due to pressures of other activities, and the mismatch of our time frames and those of the joint project.

We did see a return to our work in succession, and other activity on structured settlements, administrative procedures, and privity of contract.

As expected, we also used the existence of the Rules Project to allow us to better plan the project selection process for the adoption of projects once the Rules Project is complete. As a result of this review, we now produce a quarterly ALRI Digest, identifying requests for ALRI involvement and citations to ALRI work; an annual law reform agency update, identifying what other agencies have done and their relevance to ALRI; comprehensive background research by which the long list of possible topics is filtered to produce those that will go on to preliminary assessment and feasibility study.

If the year was one of challenge, then it is appropriate to say that the challenge was met. ALRI has a remarkable group of support staff, who have handled the logistics of myriads of meetings, support documents, distribution schemes, and participants, both cheerfully and efficiently.

No machinery runs without an engine, no program operates without drivers, and it is to counsel that ALRI looks for its energy and production. They have responded, as one would expect, with professional and demanding standards, particularly in the task of creating drafting instructions from the Rules Project consultation memoranda.

It is unusual to single out one person, but it is unavoidable to mention the work of our drafter, Mr. David Elliott. He has been given the "make it happen" task, ably supported by a "lead council" and counsel, but it has been his unique contribution to create a clear drafting style and bring the various parts together in a coherent whole. His unique skills will truly make the eventual document "sing" to its audience.

The Board has been fed a steady diet of rules issues and project management. They have, of course, survived and continue to play the vital and active management role which the ALRI structure demands and upon which ALRI thrives.

Finally, I draw your attention to a remarkable accomplishment. Ms. Margaret Shone, Q.C. will retire from full time work with ALRI on August 31, 2005, after a span of 35 years as counsel to the Institute. Her record of research and publication is lengthy and excellent, and she will be the first person accorded the title of "counsel emeritus."

ALRI thanks Margaret for her contribution, acknowledges the significance of her work, and encourages her in the next phase of her research work.

Peter J.M. Lown, Q.C.
Director

	FINAL REPORT	ENACTMENT
1*	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, S.A. 1969, c. 22 (now Victims of Crime Act, R.S.A. 2000, c. V-3).
2*	Powers of Personal Representatives to Grant Options (June 1969)	An Act to amend The Wills Act, 1960, S.A. 1970, c. 114 (now Wills Act, R.S.A. 2000, c. W-12, s. 30). An Act to amend The Devolution of Real Property Act, S.A. 1970, c. 114 (now Devolution of Real Property Act, R.S.A. 2000, c. D-12, s. 12).
3*	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 2000, c. O-4).
4*	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 2000, c. A-6).
5*	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 2000, c. G-11) accepted. Recommendations for incidental amendments not acted upon.
6*	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 2000, c. P-5).
7*	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71.
8*	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now Fair Trading Act, R.S.A. 2000, c. F-2).
9*	Rule in *Saunders* v. *Vautier* (February 1972)	The Attorney General Statutes Amendment Act, 1973, S.A. 1973, c. 13, s. 12 amending the Trustee Act (now R.S.A. 2000, c. T-8, s. 42).
10*	Powers of Maintenance and Advancement (June 1972)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 32, 34, 35, 36(3), 37).

	FINAL REPORT	ENACTMENT
11*	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 (now Law of Property Act, R.S.A. 2000, c. L- 7, ss. 10-13; Land Titles Act, R.S.A. 2000, c. L-4, ss. 68, 69, 119).
12*	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 2000, c. E-13).
13*	Judicature Act, Section 24 (August 1974)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193.
14	Minors' Contracts (January 1975)	
15*	Validity of Rules of Court (December 1974)	The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 6(4) amending the Judicature Act (now R.S.A. 2000, c. J-2, s. 63).
16*	Rule in *Hollington v. Hewthorn* (February 1975)	The Attorney General Statutes Amendment Act, 1976, S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act (now R.S.A. 2000, c. A-18, s. 26).
17*	Small Projects (June 1975)	The Workers' Compensation Amendment Act, 1976, S.A. 1976, c. 55, s. 2 (now Workers' Compensation Act, R.S.A. 2000, c. W-15, s. 20); The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 3 repealed the Bulk Sales Act, R.S.A. 1970, c. 37.
18*	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 2000, c. M-8), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home.
19*	Consent of Minors to Health Care (December 1975)	

	FINAL REPORT	ENACTMENT
20*	Status of Children (June 1976)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
21*	Purchase by a Company of Shares Which It Has Issued (January 1977)	The Companies Amendment Act, 1977, S.A. 1977, c. 13, s. 2 (now Business Corporations Act, R.S.A. 2000, c. B-9, ss. 30 and 31).
22*	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now Residential Tenancies Act, R.S.A. 2000, c. R-17), based in large part on our recommendations.
23*	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 2000, c. L-7, ss. 14-19, 20-33).
24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 2000, c. S-27; Fatal Accidents Act, R.S.A. 2000, c. F-8, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 2000, c. L-12, s. 53).
25	Family Law Administration: the Unified Family Court (April 1978)	
26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

	FINAL REPORT	ENACTMENT
27	Matrimonial Support (March 1978)	The Domestic Relations Amendment Act, 1977, S.A. 1977, c. 64 (now Maintenance Enforcement Act, R.S.A. 2000, c. M-1), establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); The Social Development Amendment Act, 1977 (No. 2), S.A. 1977, c. 92 (now Social Development Act, R.S.A. 2000, c. S-12, ss .14, 15); The Consumer and Corporate Affairs Statutes Amendment Act, 1978, S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act (now R.S.A. 2000, c. D-6, ss. 3(2), 3(3), 4(e)-(f), (6)). (Our proposals for change in the substantive law have not yet been implemented.)
28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5 (now R.S.A. 2000, c. M-20).
29	Family Relief (June 1978)	
30*	The Builders' Lien Act: Certain Specific Problems (March 1979)	Builders' Lien Amendment Act, 1985, S.A. 1985, c. 14 (now Builders' Lien Act, R.S.A. 2000, c. B-7).
31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	

	FINAL REPORT	ENACTMENT
32	Guest Passenger Legislation (April 1979)	Proclamation 5 July 1979 of previously enacted The Alberta Insurance Amendment Act, 1977, S.A. 1977, c. 76, s. 6 (now Insurance Act, R.S.A. 2000, c. I-3, s. 310) (This is not the principal recommendation of the Report). Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 1 amending the Highway Traffic Act (now R.S.A. 2000, c. H-8).
33	Inter-Spousal Tort Immunity (April 1979)	Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 2 amending the Married Women's Act (now R.S.A. 2000, c. M-6, s. 2(3)) and s. 3 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27).
34*	Service of Documents During Postal Interruptions (June 1979)	The Service of Documents During Postal Interruptions Act, S.A. 1980, c. 88 (now Judicature Act, R.S.A. 2000, c. J-2, ss. 43-47).
35*	Defamation: Fair Comment and Letters to the Editor (October 1979)	The Defamation Amendment Act, 1980, S.A. 1980, c. 11 (now Defamation Act, R.S.A. 2000, c. D-7, s. 9).
36*	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15 (now R.S.A. 2000, c. B-9).
37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
38	The Uniform Sale of Goods Act (October 1982)	
39	Defences to Provincial Charges (March 1984)	

	FINAL REPORT	ENACTMENT
40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17 (now Court of Queen's Bench Act, R.S.A. 2000, c. C-31).
41	Compensation for Security Interests in Expropriated Land (May 1984)	
42	Debt Collection Practices (June 1984)	See generally, Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
43	Protection of Children's Interests in Custody Disputes (October 1984)	
44	Statute of Frauds (June 1985)	
45*	Status of Children: Revised Report, 1985 (November 1985)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
46*	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987.
47	Survivorship (August 1986)	
48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987.

	FINAL REPORT	ENACTMENT
50	Prejudgment Remedies for Unsecured Claimants (February 1988)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
51	Proposals for a New Alberta Arbitration Act (October 1988)	Arbitration Act, S.A. 1991, c. A-43.1 (now R.S.A. 2000, c. A-43).
52	Competence and Human Reproduction (February 1989)	
53	Towards Reform of the Law Relating to Cohabitation Outside Marriage (June 1989)	
54	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1989)	Business Corporations Act, S.A. 2000, c. 10, s. 2 (now R.S.A. 2000, c. B-9, s. 45).
55	Limitations (December 1989)	Limitations Act, S.A. 1996, c. L-15.1 (now R.S.A. 2000, c. L-12).
56	The Bulk Sales Act (January 1990)	Miscellaneous Statutes Amendment Act, 1992, S.A. 1992, c. 21, s. 5 (repealed the Bulk Sales Act).
57	Section 16 of the Matrimonial Property Act (March 1990)	Miscellaneous Statutes Amendment Act, 1991, S.A. 1991, c. 21, s. 24 amending the Matrimonial Property Act (now R.S.A. 2000, c. M-8, s. 16).
58	Division of Canada Pension Plan Credits in Alberta (November 1990)	
59	Enduring Powers of Attorney (December 1990)	Powers of Attorney Act, S.A. 1991 c. P-13.5 (now R.S.A. 2000, c. P-20).
60	Status of Children: Revised Report, 1991 (March 1991)	Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).

	FINAL REPORT	ENACTMENT
61	Enforcement of Money Judgments, 2 Vols., (March 1991)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
62	Proposals for the Reform of the Public Inquiries Act (November 1992)	
63	Section 195 of the Land Titles Act (February 1993)	Miscellaneous Statutes Amendment Act, 1994, S.A. 1994, c. 23, s. 26 amending the Land Titles Act (now R.S.A. 2000, c. L-4, s. 203).
64	Advance Directives and Substitute Decision–Making in Personal Health Care (March 1993) *(A Joint Report of the Alberta Law Reform Institute and the Health Law Institute)*	Personal Directives Act, S.A. 1996, c. P-4.03 (now R.S.A. 2000, c. P-6).
65	The Domestic Relations Act (DRA) – Phase 1. Family Relationships: Obsolete Actions (March 1993)	
66	Non-Pecuniary Damages in Wrongful Death Actions—A Review of Section 8 of the Fatal Accidents Act (May 1993)	Fatal Accidents Amendment Act, 1994, S.A. 1994, c.16 (now R.S.A. 2000, c. F-8).
67	Transfers of Investment Securities (June 1993)	
68	Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act (September 1993)	Miscellaneous Statutes Act, 1994, S.A. 1994, c. 23, s. 46 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 8(b), 47(1)(c), 47(3), 47(4)).
69	Proposals for a Land Recording and Registration Act for Alberta, 2 Vols., (October 1993)	Principles adopted in the Metis Settlements Land Registry Regulation (AR 361/91).
70	Mortgage Remedies in Alberta (June 1994)	
71	The Presumption of Crown Immunity (July 1994)	

	FINAL REPORT	ENACTMENT
72	Effect of Divorce on Wills (November 1994)	
73	Revision of the Surrogate Rules (Final Report) (May 1996)	The principal statutory amendments of Report for Discussion 10 anticipating the new rules were enacted in the Miscellaneous Statutes Amendment Act, 1992, c. 21, s. 47. The Rules and Forms were enacted by Alta. Reg. 130/95.
74	Protection Against Domestic Abuse (February 1997)	Protection Against Family Violence Act, S.A. 1998, c. P-19.2 (now R.S.A. 2000, c. P-27).
75	"Last Clear Chance" Rule (August 1997)	Justice Statutes Amendment Act, 2000, S.A. 2000, c. 20, s. 72 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27, s. 3).
76	Should a Claim for the Loss of a Chance of Future Earnings Survive Death? (December 1998)	Justice Statutes Amendment Act, 2002, c. 17, s. 8 amending the Survival of Actions Act (now R.S.A. 2000, c. S-27, s. 5).
77	Limited Liability Partnerships (April 1999)	Partnership Amendment Act, S.A. 1999, c. 27 (now R.S.A. 2000, c. P-3).
78	Reform of the Intestate Succession Act (June 1999)	
79	Powers and Procedures for Administrative Tribunals in Alberta (December 1999)	
80	Trustee Investment Powers (February 2000)	Trustee Amendment Act, S.A. 2001, c. 28.
81	Occupiers' Liability: Recreational Use of Land (February 2000)	
82	Cost of Credit Disclosure (February 2000)	Insurance Act, S.A. 1999, c. I-5.1, s. 855 and Miscellaneous Statutes Amendment Act, 1999, S.A. 1999, c. 26, s. 8 amending the Fair Trading Act (now R.S.A. 2000, c. F-2, Part 9, s. 66 and 69).
83	Division of Matrimonial Property on Death (May 2000)	

	FINAL REPORT	ENACTMENT
84	Wills: Non-Compliance with Formalities (June 2000)	
85	Class Actions (December 2000)	Class Proceedings Act, S.A. 2003, c. C-16.5.
86	Non-Resident Trustees under the Dependent Adults Act (January 2002)	
87	Report on a Succession Consolidation Statute (December 2002)	
88	Enduring Powers of Attorney: Safeguards Against Abuse (February 2003)	
89	Limitations Act – Adverse Possession and Lasting Improvements (May 2003)	
90	Limitations – Standardizing Limitation Periods for Actions on Insurance Contracts (August 2003)	
91	Exemption of Future Income Plans (May 2004)	
92	Exemption of Future Income Plans on Death (May 2004)	
93	Family Law Project – The Conclusion (June 2004)	Family Law Act enacted as S.A. 2003, c. F-4.5. Proclaimed November 2005.

	REPORTS FOR DISCUSSION	NOTE
1*	Protection of Trade Secrets (February 1984)	
2*	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)	
3*	Remedies of Unsecured Creditors (May 1986)	
4	Limitations (September 1986)	
5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)	
6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)	
7	Enduring Powers of Attorney (February 1990)	
8	Towards a New Alberta Land Titles Act (August 1990)	
9	Mortgage Remedies in Alberta (April 1991)	
10	Revision of the Surrogate Rules (October 1991)	
11*	Advance Directives and Substitute Decision–Making in Personal Health Care (November 1991)	
12	Non-Pecuniary Damages in Wrongful Death Actions — A Review of Section 8 of the Fatal Accidents Act (June 1992)	
13	Report on Liens (September 1992)	

REPORTS FOR DISCUSSION		NOTE
14	The Matrimonial Home (March 1995)	
15*	Domestic Abuse: Toward an Effective Legal Response (June 1995)	
16	Reform of the Intestate Succession Act (January 1996)	
17	Division of Matrimonial Property on Death (March 1998)	
18	Family Law (October 1998)	
	18.1 Overview	
	18.2 Spousal Support	
	18.3 Child Support	
	18.4 Child Guardianship, Custody and Access	
19	Order of Application of Assets in Satisfaction of Debts and Liabilities (September 2001)	

	ISSUES PAPERS	NOTE
1	Towards a New Arbitration Act for Alberta (July 1987)	
2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)	
3	Public Inquiries (November 1991)	
4	Limited Liability Partnerships and Other Hybrid Business Entities (March 1998)	
5	Enduring Powers of Attorney (February 2002)	

DISCUSSION PAPERS		NOTE
1	Civil Litigation: The Judicial Mini-Trial (August 1993)	

	RESEARCH PAPERS	NOTE
1*	Rent Control: Security of Tenures (November 1975)	
2*	Entry of Landlord; Locks and Security Devices (November 1975)	
3*	Obligation to Repair; Security Deposits (November 1975)	
4*	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)	
6*	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)	
7*	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)	
8*	Mobile Homes (November 1975)	
9*	Consent of Minors to Medical Treatment (May 1975)	
10	Illegitimacy (June 1974)	
11*	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)	
12*	Statute of Frauds (March 1979)	
13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioural and Social Sciences: March 1981)	

	RESEARCH PAPERS	NOTE
14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)	
15	Survey of Adult Living Arrangements: A Technical Report (November 1984)	
16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)	
17*	Corporate Directors' Liability (February 1989)	
18	Report on Referees (February 1990)	The principal recommendation of Research Paper 18 was implemented by Alta. Reg. 308/91.
19	Dispute Resolution: A Directory of Methods, Projects and Resources (July 1990)	
20	Court-Connected Family Mediation Programs in Canada (May 1994)	
21	Recognition of Rights and Obligations in Same Sex Relationships (January 2002)	

CONSULTATION MEMORANDA

1 Division Of Pension Benefits Upon Marriage Breakdown (September 1995)

2 Reasonable Accommodation In The Workplace (November 1995)

3 Business Names Legislation (December 1996)

4 Should a Claim for Loss of Chance of Future Earnings Survive Death? (August 1997)

5 Should a Claim for Punitive Damages Survive Death? (December 1998)

6 Powers and Procedures for Administrative Agencies: Model Code (April 1999)

7 Trustee Investment Powers (September 1999)

8 Wills: Non-Compliance with Formalities (December 1999)

9 Class Actions (March 2000)

10 Standardizing Limitation Periods for Actions on Insurance Contracts (December 2001)

11 Creditor Access to Future Income Plans (June 2002)

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12.1 Commencement of Proceedings in Queen's Bench (October 2002)

12.2 Document Discovery and Examination for Discovery (October 2002)

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12.4 Parties (March 2003)

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12.8 Pleadings (October 2003)

12.9 Joining Claims and Parties, Including Third Party Claims, Counterclaims, and Representative Actions (February 2004)

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12.11 Enforcement of Judgments and Orders (August 2004)

12.12 Summary Disposition of Actions (August 2004)

12.13 Judicial Review (August 2004)

12.14 Miscellaneous Issues (October 2004)

12.15 Non-Disclosure Order Application Procedures in Criminal Cases (November 2004)

CONSULTATION MEMORANDA
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12.16 Trial and Evidence Rules – Parts 25 and 26 (November 2004)

12.17 Costs and Sanctions (February 2005)

12.18 Self-Represented Litigants (March 2005)

PRACTICE MANUALS

Alberta Surrogate Forms

- Integration of rules and forms
- Comprehensive collection of forms
- Computer templates including completion instructions
- User notes

Arbitration Clauses Guide

- Checklists of procedural rules under the Act
- Discussion of sample clauses and agreements
- Complete set of procedural rules ready for adoption

(*Manuals are available from the Legal Education Society of Alberta*)

OTHER PUBLICATIONS

Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, The Council of Maritime Premiers, N.W.T., Ontario, Saskatchewan and Yukon) (July 1990)

Final Revisions. Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada. (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, N.W.T., Ontario, Saskatchewan and Yukon)
(March 1993)

The Self-Regulation of the Legal Profession in Canada and in England and Wales by W.H. Hurlburt. Co-published by: The Law Society of Alberta and the Alberta Law Reform Institute. (January 2000)

AVAILABLE ON OUR WEBSITE <http://www.law.ualberta.ca/alri>

Alberta Rules of Court Project – Issues Paper for the Legal Community
(October 2001)

Alberta Rules of Court Project – Public Consultation Paper and Questionnaire

Investment by Nonprofit Entities – Feasibility Study
(May 2002)

Alberta Rules of Court Project – Public Consultation Report (September 2002)

Alberta Rules of Court Project – Report on Legal Community Consultation
(September 2002)

Alberta Rules of Court Project – Family Law Issues Paper (October 2002)

Alberta Rules of Court Project – Judicial Review and Administrative Law – Identified Issues (March 2003)

Alberta Rules of Court Project – Focus Group Report (April 2003)